



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/152006

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 10, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on October 08, 2013, at West Bend, Wisconsin.

The issue for determination is whether the agency properly ended the Petitioner's FS benefits effective September 1, 2013 for income exceeding the program limit.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Julie Williamson

Washington County Department of Social Services  
333 E. Washington Street  
Suite 3100  
West Bend, WI 53095

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County. Petitioner's household size is five, consisting of Petitioner, JJ (adult) and three minor children.

2. Petitioner and members of her household were receiving BC+ benefits with no premium. On August 2, 2013, the Petitioner completed a Six Month Report Form and submitted it to the agency. No changes were reported.
3. Petitioner and JJ are self-employed in farming.
4. On August 8, 2013, the agency received the Petitioner's 2012 tax returns. On Schedule F, the Petitioner reported gross income of \$130,979, depreciation of \$32,147, total expenses of \$121,286 and net profit of \$9,693.
5. The depreciation of \$32,147 is a result of a one-time federal EQIP conservation grant the Petitioner and JJ received to implement conservation practices on their farm.
6. Petitioner receives \$283/month in child support payments.
7. On August 9, 2013, the agency issued a Notice of Decision informing the Petitioner that FS benefits would end effective September 1, 2013 due to income over the income limit.
8. On August 12, 2013, the Petitioner contacted the agency to discuss the Notice of Decision. She reported at that time that the depreciation expense was due to the federal grant.
9. On August 26, 2013, the Petitioner contacted the agency and again reported the depreciation expense was high in 2012 due to the one-time federal grant. She further reported that 2013 income is decreased from 2012.
10. On August 27, 2013, the agency issued a Notice of Proof Needed requesting verification of Petitioner's self-employment income. The due date noted for the information was September 5, 2013.
11. On September 10, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$187 per month for a household of five people. 7 C.F.R. §273.9(d)(1); FoodShare Wisconsin Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FoodShare Wisconsin Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FoodShare Wisconsin Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FoodShare Wisconsin Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FoodShare Wisconsin Handbook, App. 4.6.7.

Here, the agency used the Petitioner's tax returns to determine monthly income. It added net income and depreciation as reported on the tax return. It then divided that total by twelve months and added monthly child support payments for a monthly household income of \$3,769. This is less than the gross income limit for a household of 5 of \$4,502. The agency then subtracted the standard deduction and earned income deduction for a net adjusted income of \$2,885.33. The net income limit for a household of 5 is \$2,251. Because the Petitioner's net adjusted income exceeded the net income limit for the program, the agency ended Petitioner's benefits effective September 1, 2013.

The Petitioner argued that the agency improperly added the depreciation expense back into the net income. I conclude that the agency properly followed the regulations with regard to the depreciation expense. However, in determining the Petitioner's net income, the one-time federal grant was included in the Petitioner's countable income. It is reflected on Line 8 of Schedule F and the attachment detailing the items included in Line 8. The FoodShare Wisconsin Handbook provides as follows:

**4.5.5 Nonrecurring Lump Sum Payment**

Disregard, exempt, or exclude money received as a nonrecurring lump sum payment as income. A nonrecurring lump sum is a payment received only once. Count it as a liquid asset in the month the food unit receives it.

The lump sum payment that the Petitioner received as a federal grant is in the nature of the examples cited in this section as a one-time payment which should be counted as an asset. Therefore, it should not be included as income. In determining the Petitioner's eligibility, the agency should deduct the amount of the grant from the Petitioner's gross income.

**CONCLUSIONS OF LAW**

The agency did not properly calculate Petitioner's monthly household income when it included a one-time lump sum federal grant payment of \$37,887 in Petitioner's countable income.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency to take all of the administrative steps necessary to re-open the Petitioner's case and re-determine the Petitioner's eligibility effective September 1, 2013. The agency shall not count a one-time federal grant payment of \$37,887 in the Petitioner's income. The agency shall issue a new Notice of Decision to the Petitioner with its determination and shall issue new appeal rights in that notice to the Petitioner. These actions shall be completed within 10 days of the date of this decision.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

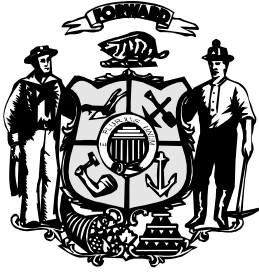
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 5th day of November, 2013

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 5, 2013.

Washington County Department of Social Services  
Division of Health Care Access and Accountability